deceased was engaged in erecting and installing one of the tanks in the said city of Ironton, Ohio, and while in the course and within the scope of said employment, fell from the top of the tank sustaining a fracture at the base of the skull and as a direct and proximate result of said injury, the said William R. Tidwell died on the following day, to wit, May 6, 1928.

7. Plaintiff further says that Mrs. Cora Tidwell, wife of the said deceased, did on the sixteenth day of October, 1928, file her application with the Industrial Commission of Ohio for compensation from the defendant herein on account of the injury received by her husband, William R. Tidwell, which caused his death as above set forth, in accordance with Section 27 of the workmen's compensation law of Ohio, the same being Section 1465-74 of the General Code of Ohio; that thereafter on or about the fourteenth day of June, 1929, said Industrial Commission of Ohio, after due and proper notice to the defendant, heard the application of said Mrs. Cora Tidwell and found and determined that the said Mrs. Cora Tidwell was wholly dependent on the deceased at the time of his death, and that said Mrs. Cora Tidwell was entitled to compensation for said injury and death of her husband, William R. Tidwell, in the sum of four thousand eight hundred dollars and sixty-four cents ($4800.64) for two hundred eight weeks (208) at the rate of twenty-three dollars and eight cents ($23.08) per week; also a sum of one hundred ten dollars ($110.00) medical and funeral expenses. (Agreed statement of facts, see Appendix B.)

8. The plaintiff says that by virtue of the facts here-

inbefore recited, and under and by virtue of the laws of the state of Ohio, hereinbefore referred to, and which are specially relied upon, the Industrial Commission of Ohio was duly empowered and authorized to make the said award, had all necessary authority and jurisdiction therefor, and that in said proceeding before the said commission, the defendant herein appeared and defended said proceedings before the said commission. Plaintiff further charges that the award as made by the said commission, and as recited hereinabove, was a proper and legal award under the facts and pursuant to the said statutes of the state of Ohio, in which state the said William R. Tidwell was injured and died while employed by the defendant herein, which said defendant herein was at said time engaged in business in the state of Ohio and subject to the terms of the workmen's compensation law of the state of Ohio, hereinabove referred to.

9. A certified copy of the finding of facts and order to the employer, of the Industrial Commission of Ohio, in this claim, (see Appendix C) was sent to this defendant on or about the first day of July, 1929, in accordance with Section 1465-74 of the General Code of Ohio.

10. Plaintiff further says that the defendant failed, neglected and refused to pay the claim or furnish a bond thereto within a period of ten days after notification of such finding and award as ordered by the Industrial Commission of Ohio, and that the defendant continues to fail, neglect and refuse to pay the same and the state of Ohio has paid the said Mrs. Cora Tidwell the full amount of the award out of the state fund.

Wherefore, plaintiff prays that the defendant may be required to answer the allegations hereinbefore set forth and that upon a final hearing a judgment be granted against the defendant in the sum of four thousand nine hundred ten dollars and sixty-four cents ($4910.64), together with interest and the costs of this action and to such further relief as the plaintiff may be entitled in the premises.

The State of Ohio,
By GILBERT BETTMAN,
Attorney General,
OSCAR A. BROWN,
Assistant Attorney General,
Counsel for Plaintiff.

Verification.

United States of America, State of Ohio, County of Franklin, ss.:

Gilbert Bettman, being duly sworn on oath says that he is the duly elected, qualified and acting attorney general of the state of Ohio and that he has read the aforegoing petition and knows the contents thereof and that the same is true to his own knowledge and belief and that as such attorney general of the state of Ohio, he is duly authorized to pray leave to file the said petition.

Gilbert Bettman,
Attorney General of the State of Ohio.

Subscribed and sworn to before me by Gilbert Bettman this twenty-first day of December, 1931.

[Seal.] Robert B. Barcus,
Notary Public in and for Franklin County, Ohio.

My commission expires the sixteenth day of July, 1933.

WAIVER OF PROCESS.

The defendant hereby waives the issuance and service of summons and voluntarily enters its appearance herein as defendant this twenty-first day of December, 1931.

The Chattanooga Boiler and Tank Company,
By ARNOLD, WRIGHT, PURPUS & HARLOR,
Its Attorneys.

APPENDIX A.

The Constitution of Ohio.

Article II.

Sec. 35. For the purpose of providing compensation to workmen and their dependents, for death, injuries or occupational disease, occasioned in the course of such workmen's employment, laws may be passed establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, determining the terms and conditions upon which payment shall be made therefrom. Such compensation shall be in lieu of all other rights to compensation, or damages, for such death, injuries, or occupational disease, and any employer who pays the premium or compensation provided by law, passed in accordance herewith, shall not be liable to respond in damages at common law or by statute for such death, injuries or occupational disease. Laws may be passed establishing a board which may be empowered to classify all occupations, according to their degree of hazard, to fix rates of contribution to such fund according to such classification, and to collect, administer and distribute such fund, and to determine all right of claimants thereto. Such board shall set aside as a separate fund such proportion of the contributions paid by employers as in its judgment may be necessary, not to exceed one per centum thereof in any year, and so as to equalize, insofar as possible, the burden thereof, to be

expended by such board in such manner as may be provided by law for the investigation and prevention of industrial accidents and diseases. Such board shall have full power and authority to hear and determine whether or not an injury, disease or death resulted because of the failure of the employer to comply with any specific requirement for the protection of the lives, health or safety of employes, enacted by the General Assembly or in the form of an order adopted by such board, and its decision shall be final; and for the purpose of such investigations and inquiries it may appoint referees. When it is found, upon hearing, that an injury, disease or death resulted because of such failure by the employer, such amount as shall be found to be just, not greater than fifty nor less than fifteen per centum of the maximum award established by law, shall be added by the board, to the amount of the compensation that may be awarded on account of such injury, disease, or death, and paid in like manner as other awards; and, if such compensation is paid from the state fund, the premium of such employer shall be increased in such amount, covering such period of time as may be fixed, as will recoup the state fund in the amount of such additional award, notwithstanding any and all other provisions in this Constitution.

(As amended. Effective Jan. 1, 1924. 110 O. L. 631.)

Sec. 1465-74. Any employe whose employer has failed to comply with the provisions of Section 1465-69, who has been injured or has suffered an occupational disease in the course of his employment, and which was not purposely self-inflicted, or his dependents in case death has

ensued, may, in lieu of proceedings against his employer by civil action in the courts, as provided in Section 1465-73, file his application with the commission for compensation and the commission shall hear and determine such application for compensation in like manner as in other claims and shall make such award to such claimant as he would be entitled to receive if such employer had complied with the provisions of Section 1465-69, and such employer shall pay such award in the manner and amount fixed thereby or shall furnish to the Industrial Commission a bond, in such an amount and with such sureties as the commission may require, to pay such employe such award in the manner and amount fixed thereby. In the event of the failure, neglect or refusal of the employer to pay such compensation to the person entitled thereto, or to furnish such bond, within a period of ten days after notification of such award, the same shall constitute a liquidated claim for damages against such employer in the amount so ascertained and fixed by the commission, and the commission shall certify the same to the attorney general who shall forthwith institute a civil action against such employer in the name of the state, for the collection of such award. In such action it shall be sufficient for plaintiff to set for(th) a copy of the record of proceedings of the commission relative to such claims as certified by the commission to the attorney general and to state that there is due to plaintiff on account of such finding and award of the commission a specified sum which plaintiff claims with interest. A certified copy of such record of proceedings in such claim shall be attached to the petition

and shall constitute prima facie evidence of the truth of the facts therein contained. The answer or demurrer to such petition shall be filed within ten days, the reply or demurrer to the answer within twenty days, and the demurrer to the reply within thirty days after the return day of the summons or service by publication. All motions and demurrers shall be submitted to the court within ten days after the same are filed. As soon as the issues are made up in any such case, it shall be placed at the head of the trial docket and shall be first in order for trial. The cause of action herein provided and the cause of action provided by Section 1465-75 may be joined in one action against an employer, and the amount of any premium paid or recovered from such employer for the period not exceeding six months during which such injury or disease, or injury or disease resulting in death, occurred shall be credited against the amount of any judgment for compensation recovered pursuant to the provisions of this section. The amount recovered in such action from such employer shall be paid into the state insurance fund. And any employe whose employer has elected to pay compensation to his injured, or to the dependents of his killed employes in accordance with the provisions of Section 1465-69, may, in the event of the failure of his employer to pay such compensation or furnish such medical, surgical, nursing and hospital services and attention or funeral expenses, file his application with the commission for the purpose of having the amount of such compensation and such medical, surgical, nursing and hospital services and attention or funeral expenses

determined; and thereupon like proceedings shall be had before the commission and with like effect as hereinbefore provided.

And the commission shall adopt and publish rules and regulations governing the procedure before the commission provided in this section and shall prescribe form of notices and the mode and manner of serving the same in all claims for compensation arising under this section. Any suit, action, proceeding or award brought or made against any employer under the provisions of this section, may be compromised by the commission, or such suit, action or proceeding may be prosecuted to final judgment as in the discretion of the commission may best subserve the interests of the state insurance fund.

The payment of any judgment recovered in the manner provided herein shall entitle such claimant to the compensation provided by this act for such injury, occupational disease or death. The attorney general shall, as soon as the circumstances warrant, and not more than two years after the date of such award made by the commission, certify to the commission the result of his efforts to recoup the state insurance fund as herein provided, and if he certifies that such award cannot be collected in whole, the award shall be paid from the surplus created by Section 1465-54, and any sum then or thereafter recovered on account of such award shall be paid to the commission and credited to such fund as the commission may designate.

(As amended 111 O. L., 222. Effective July 14, 1925.)

APPENDIX B.

Agreed Statement of Facts.

It is hereby stipulated and agreed by and between the parties hereto that the facts hereinafter set forth shall be taken as true as though established by competent evidence taken in open court. It is further stipulated that the court may take judicial notice of the constitutional provisions, statutes and decisions of the states of Ohio and Tennessee.

1. Plaintiff is the duly elected, qualified and acting attorney general of the state of Ohio and brings this action on behalf of the state of Ohio in his official capacity, the state of Ohio being the real party in interest.

2. The defendant is a corporation organized and existing under and by virtue of the laws of the state of Tennessee with its principal place of business located in the city of Chattanooga, Tennessee. It has never qualified as a foreign corporation, to do business in the state of Ohio.

3. Substantially all of the business of the defendant was and is transacted in the state of Tennessee where its plant for the construction and manufacture of boilers and tanks is situated, but when such boilers and tanks were and are sold by the defendant to the purchasers in various states the installation and erection of them was and is necessary in such other states. The defendant has never had any office or place of business in the state of Ohio

but it did install certain boilers and tanks in the state of Ohio for the period of time and under the circumstances hereinafter stated.

4. On or about September 2, 1926, the defendant entered into an oral contract of hire or employment in Chattanooga, Tennessee, with one William R. Tidwell. This contract provided and contemplated that the services to be performed by Tidwell were to be performed in the state of Tennessee and such other states as the defendant might from time to time designate; that at times Tidwell was employed as a rivet-heater in installation work by said defendant. Tidwell was a citizen and resident of the state of Tennessee. After his death his widow, Mrs. Cora Tidwell, became a resident and citizen of the state of Georgia.

5. The defendant had accepted and duly complied with the workmen's compensation act of the state of Tennessee and Tidwell had also accepted the act. On May 2, 1929, his widow, Mrs. Cora Tidwell, filed an application for compensation under the workmen's compensation act of Tennessee for the death of her husband and no action was taken on said application. The said Mrs. Cora Tidwell thereafter filed suit in the Circuit Court of Hamilton county at Chattanooga, Tennessee, to recover as provided by the workmen's compensation act of Tennessee, for the death of her husband and said action is now pending.

6. Sometime prior to April 9, 1928, defendant sold to Ironton By-Products Coke Company of Ironton, Ohio, certain tanks manufactured by defendant in the state

of Tennessee and under the contract of sale which was consummated in Chattanooga, Tennessee, the defendant was required to install and erect said tanks in Ironton, Ohio. On April 9, 1928, Tidwell, together with three other employes of defendant, citizens and residents of the state of Tennessee, came at the direction of the defendant from Chattanooga, Tennessee, to Ironton, Ohio, to erect and install said tanks. The defendant hired four additional employes in the city of Ironton, all of whom were citizens and residents of the state of Ohio. The work of installation in Ironton, Ohio, was completed on May 11, 1928. While engaged in erecting and installing one of said tanks and while in the course and within the scope of his employment, said Tidwell, on May 5, 1928, fell from the top of said tank sustaining a fracture at the base of the skull and as a direct and proximate result of said injury died the following day, May 6, 1928, at Ironton, Ohio.

7. The defendant on and about May 6, 1928, had in its employ within the state of Ohio more than three workmen or operatives regularly employed in its business.

8. The defendant did not comply with the provisions of the workmen's compensation act of Ohio either by becoming a subscriber to the state insurance fund or by electing to pay compensation direct to injured employes or to their dependents in case of death.

9. Mrs. Cora Tidwell, wife of William R. Tidwell, deceased, filed her application on October 16, 1928, with the Industrial Commission of Ohio for compensation from the defendant herein on account of the death of her hus-

band in accordance with the provisions of the workmen's compensation act of the state of Ohio, the same being Section 1465-74 of the General Code of Ohio; that thereafter, on June 14, 1929, the Industrial Commission of Ohio, after notice to the defendant, considered the application of said Mrs. Cora Tidwell and found and determined that she was wholly dependent on her deceased husband at the time of his death and that she was entitled under the workmen's compensation law of Ohio to the compensation for the death of her husband in the sum of four thousand eight hunderd dollars and sixty-four cents ($4,800.64), the same being compensation for two hundred eight (208) weeks at the rate of twenty-three dollars and eight cents ($23.08) per week, and also to the sum of one hundred ten dollars ($110.00) medical and funeral expenses. The commission further found that the defendant was an employer within the meaning of the workmen's compensation law of Ohio and subject to the provisions therein and ordered the defendant to pay the above amounts to the Industrial Commission of Ohio.

10. In the proceedings before the industrial commission of Ohio the defendant specially appeared and denied the jurisdiction, power and authority of the Industrial Commission of Ohio to make an award upon said application.

11. The defendant has failed and refused to pay the amount of the award or to be bound by the proceedings and determination of the Industrial Commission of Ohio.

12. Mrs. Cora Tidwell, the claimant, has been paid,

by virtue of the provisions of Section 1465-74, General Code of Ohio, by the Industrial Commission of Ohio the full amount of the award, from the surplus created by Section 1465-54 of the General Code of Ohio.

13. The defendant is not a citizen or resident of the state of Ohio nor does it have an office or agent within said state and service of summons cannot be had upon it in an action brought against it by the state of Ohio through its attorney general pursuant to Section 1465-74 of the General Code of Ohio.

The State of Ohio.
By GILBERT BETTMAN,
Attorney General,
OSCAR A. BROWN,
Assistant Attorney General,
Counsel for Plaintiff.

The Chattanooga Boiler & Tank Company,
By ARNOLD, WRIGHT, PURPUS & HARLOR,
Its Attorneys.

APPENDIX C.

State of Ohio, County of Franklin, ss.:

I, T. A. Edmondson, hereby certify that I am the duly appointed, qualified and acting secretary of the Industrial Commission of Ohio and as such am duly authorized in the premises:

That the attached are true and correct copies of the finding of facts and the order issued by the Industrial Commission of Ohio on the fourteenth day of June, 1929, in the case of Mrs. Cora Tidwell v. Chattanooga Boiler & Tank Co., Chattanooga, Tenn., known on the records of the commission as Claim No. 3096, Section 27.

In Witness Whereof, I have hereunto subscribed my hand and affixed the official seal of said commission this first day of April, 1931.

T. A. Edmonson,
Secretary.

[Seal.]

Finding of Facts and Order to Employer, Under Section 27 of Compensation Act.

No. 3096-27.

Name, W. R. Tidwell, Deceased.

Applicant, Mrs. Cora Tidwell.

To Chattanooga Boiler & Tank Co., N. Main St., Chattanooga, Tenn.

Notice is hereby given of the following findings of fact this day made by The Industrial Commission of

Ohio in the claim of Mrs. Cora Tidwell, 76 N. 7th St., Dalton, Georgia, heretofore filed with said commission by virtue of the provisions of Section 27 of the workmen's compensation act; on account of the death of W. R. Tidwell (hereinafter referred to as deceased).

1. Deceased on the fifth day of May, 1928, sustained an injury which resulted in his death on the sixth day of May, 1928.

2. Deceased was employed at the time of injury causing death by Chattanooga Boiler & Tank Co., Chattanooga, Tenn.

3. Prior to and at the time of said injury, said employer employed three or more workmen or operatives regularly in the same business or in and about the same establishment in which deceased was employed.

4. Said employer was not on said date a subscriber to the state insurance fund, as established by the workmen's compensation act (103 O. L. 72).

5. Said employer had not on said date elected to pay compensation, etc., direct, under the provisions of Section 22, of said act.

6. The injury causing death of deceased was sustained in the course of employment, and at the time and in the manner alleged in the application.

7. Said injury was not purposely self-inflicted.

8. Prior to the time of filing claim with this commission, said Mrs. Cora Tidwell, applicant, had not begun a civil action against the employer of deceased on account of the death of deceased.

9. That the following persons were dependents of deceased: Mrs. Cora Tidwell, widow.

10. Applicant has incurred for medical and funeral expenses, etc., the sum of $110.00 ($65.00 previously paid by employer).

The commission therefore finds that there is due said applicant, Mrs. Cora Tidwell, the following amounts for compensation, medical and funeral expenses, etc.:

Compensation at the rate of $11.54 per week for 416 weeks..... $4,800.64

Dr. O. H. Benninger, 112 S. 6th St., Ironton, Ohio..... $25.00

Medical and funeral expenses, etc.—

Bingaman & Jones, Ironton, Ohio.. 85.00 110.00

Within ten (10) days from the date hereof, you will pay to said applicant, in the manner indicated below, the amounts named above, in accordance with provisions of Section 27 of said act.

Compensation to be paid in bi-weekly installments of $11.54 each, beginning May 7, 1928.

Date at Columbus, this fourteenth day of June, 1929.

Attest:

T. A. Edmonson,
Secretary.

Wellington T. Leonard,
Chairman.

State of Ohio, County of Franklin, ss:

I, the undersigned, chief of the division of workmen's compensation of the Industrial Commission of Ohio, do hereby certify that the findings of fact set forth in the

foregoing notice is a true and accurate copy of the findings of fact made in Claim No. 3096-27, Cora Tidwell, claimant, on the fourteenth day of June, 1929, upon the hearing of said claim held before said commission at its office in the city of Columbus, Ohio, and that said commission did then and there order that a certified copy of said findings be forthwith transmitted by registered United States mail to said

In witness whereof I have hereunto subscribed my name and affixed the seal of said commission this first day of July, 1929.

Ross Hedges,
Chief, Division of Workmen's Compensation.